Nos. 20715 & 20733 & 20734

In the United States Court of Appeals for the Ninth Circuit

DANIEL M. MORGAN, ALFRED ZIEGELE, HERBERT L. NOLTE

vs.

UNITED STATES OF AMERICA

BRIEF FOR APPELLEE

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SUBJECT INDEX

TABLE OF CASES

STATUTES

RULES

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STATEMENT OF JURISDICTION

Jurisdiction of the United States District Court is based upon Sections 4401, Title 26, U.S.C. 7201, Title 26, U.S.C., and 3231 of Title 18, U.S.C. The jurisdiction upon appeal of this Circuit Court to review a final judgment of the District Court is predicated upon the grant of jurisdiction given under Section 1291 and 1294 of Title 28, U.S.C.

STATEMENT OF THE CASE

On June 10, 1965, the Federal Grand Jury charged the defendants Daniel M. Morgan, Alfred Ziegele and Herbert L. Nolte with (1) a violation of Title 18, U.S.C., Section 371; namely, a conspiracy to defraud the United States, and (2) a violation of Title 26, U.S.C., Section 7201; namely, wilful tax evasion, predicated upon the failure of the defendants to comply with the Wagering Tax Act. (Title 26, U.S.C., Chapter 35.)

With respect to Count One, the alleged conspiracy, the substance of this charge was that the defendants conspired to obstruct, impede, etc., the Internal Revenue Service and the Treasury Department in the computation, assessment and the collection of wagering taxes due under U.S. Code, Title 26, Section 4401 and U.S. Code, Title 26, Section 4411.

After trial by jury, each defendant was found not guilty with respect to the conspiracy charge.

Count Two, the charge of wilful tax evasion, in substance alleged that the defendants accepted wagers and that "(4) as principals of the said wagering business, the said defendants were required by law, on or before December 31, 1964, to file a wagering excise tax return, Form 730, with the District Director of Internal Revenue, San Francisco, California, and to pay such wagering excise tax." The second count further alleges that defendants wilfully attempted to evade and defeat the tax, and set forth certain acts allegedly committed by the defendants for the purpose of concealing the size and extent of their wagering business. Among such evidentiary acts

was the failure of the defendants to pay the special occupation tax imposed by Section 4411, Title 26, of the U.S. Code.

Each defendant was convicted on Count Two. Thereafter, each defendant duly renewed and presented to the Court motions for an aquittal and, in the alternative, motions for an order granting a new trial. The motions were denied as to all defendants. On December 21, 1965, judgment was pronounced against each defendant. On December 28, 1965 defendant Nolte's motion for leave to appeal in forma pauperis was granted. On December 28, 1965 defendant Nolte filed his notice of appeal. On or about the 29th day of December, 1965, defendants Morgan and Ziegele filed their notices of appeal from the judgment so entered.

RELEVANT LAW

(See Appendix, infra)

STATEMENT OF FACTS

Appellants in their Statement of Facts have omitted the following pertinent facts:

1. That Mrs. Holeman testified that Nolte told her that if one week his bettors won more than they lost, then his backers would cover the loss but that in the following weeks he would have to reimburse the backers out of his share of the winnings (T. p. 96).

2. That it was stipulated that the trial court would explain to the jury its remarks concerning the playing of the tapes and further the court would state to the jury that if any juror felt that the court's comments were critical of either side that he was to raise

his hand, and that if any juror raised his hand the court would declare a mistrial (T. p. 334). Thereafter, the court addressed the jury in accordance with the stipulation and no juror raised a hand. (T. p. 337)

3. That Daniel Morgan admitted a prior felony conviction for bookmaking (T. p. 602) and that he knew Ziegele was taking horse bets on the telephone (T. p. 596).

4. That Alfred Ziegele admitted that he had a prior felony conviction for failing to have a wagering tax stamp (T. p. 627).

QUESTIONS PRESENTED

1. Whether the Wagering Tax Act violates the Fifth Amendment privilege against self-incrimination?
2. Whether the evidence was sufficient to sustain the verdict?
3. Whether the District Court in instructing on aiding and abetting amended the indictment in violation of the Fifth Amendment?
4. Whether the District Court erred in denying appellants' motions for a mistrial based upon the alleged misconduct of counsel for the government?
5. Whether a prosecution based upon the Wagering Tax Statutes constitutes a denial of the due process rights of the appellants under the Fifth Amendment?
6. Whether the remarks of the Court made in the presence of the jury pertaining to the tapes

played at the trial were prejudicial to the defendants?

7. Whether the District Court erred in instructing the jury before argument concerning acts and declarations of co-conspirators?

8. Whether the District Court's instructions on tax liability were erroneous?

SUMMARY OF ARGUMENT

1. Certiorari has been granted in *Marchetti* v. *United States*, —— U.S. —— and in *Grosso* v. *United States*, 358 F.2d 154, —— U.S. ——, 87 S.Ct. 47 (1966) and the cases were argued in the Supreme Court on January 17 and 18, 1967. In those cases the constitutionality of the wagering tax laws are being reviewed by the Supreme Court. Therefore, we suggest that this Court withhold its decision regarding the constitutionality of the wagering tax law until the Supreme Court has ruled in those cases.

2. In considering the contention that a conviction is not supported by substantial evidence, the appellate court must take that view of the evidence which is most favorable to sustaining the verdict of the jury. *Glasser* v. *United States*, 315 U.S. 60, 62 S.Ct. 457, (1942), *Diaz-Rosendo* v. *United States*, 357 F. 2d 124 (9th Cir., 1966). The evidence adduced at the trial was clearly sufficient to sustain the conviction of guilty.

3. Under Title 18, Section 2 an aider and abettor is punishable as a principal. It is not necessary to be charged as an aider and abettor in order to be held as

a principal. *Nye & Nissen* v. *United States*, 336 U.S. 613, 69 S.Ct. 766 (1949).

4. It is neither prejudicial error nor misconduct for a prosecutor to lay a foundation for the admission of evidence which is subsequently excluded on objection. *Schmidtberger* v. *United States*, 129 F.2d 390 (8th Cir., 1942).

5. The law is clear as to the tax liability of those who operate or assist in the operation of a gambling enterprise. See, *United States* v. *Calamaro*, 354 U.S. 351, 77 S.Ct. 1138 (1957).

6. It was stipulated that the court would explain to the jury its remarks concerning the tapes and further that the court would state to the jury that if any juror felt the court's comments were critical of either side that he was to raise his hand, and that if any hands were raised the court would declare a mistrial (T. 334). Thereafter, the court addressed the jury in accordance with the stipulation (T. 337). No juror raised a hand (T. 337). It is apparent that the petitioners were in no way prejudiced by the discussion and remarks by the court concerning the playing of the tapes.

7. It is not error to instruct the jury prior to argument provided that the jury is appropriately instructed after argument. *Sembler* v. *United States*, 332 F.2d 6 (9th Cir., 1964). After argument the jury was correctly instructed on acts and declarations of co-conspirators. They acquitted the appellants of the conspiracy charge. Therefore, even if the instruction was incomplete, the appellants were not prejudiced by the instruction being given prior to argument.

8. In reviewing instructions given to the jury, the appellate court must consider the instructions as a whole. *Herzog* v. *United States*, 235 F.2d 664 (9th Cir., 1956). The instructions given to the jury relating to the excise tax liability of the appellants were complete and correct.

ARGUMENT

I

The Federal Wagering Tax Statutes Do Not Violate the Privilege Against Self-Incrimination Guaranteed by the Fifth Amendment

In attacking the constitutionality of the wagering tax laws, petitioners are in effect requesting this Court to ignore or overrule the decisions of the Supreme Court in *United States* v. *Kahriger*, 345 U.S. 22, 73 S.Ct. 510 (1953) and *Lewis* v. *United States*, 348 U.S. 419, 75 S.Ct. 415 (1955). We assume that this Court, however, as did the Court of Appeals for the Second Circuit in the case of *Costello* v. *United States*, 352 F.2d 848, will hold itself obliged to follow those cases unless and until they are expressly overruled by the Supreme Court. Certiorari has been granted in the *Costello* case, 388 U.S. 942 and in *Grosso* v. *United States*, 358 F.2d 154, —— U.S. ——. Both of those cases have been briefed for the Supreme Court by both sides and were argued on January 17 and 18, 1967.

Since it would appear that the determination of the Supreme Court in those cases will be dispositive of this issue in this case, we would suggest that this

Court withhold its decision herein pending the determination of the *Grosso* case and the case subsequently placed on the docket in lieu of *Costello.**

II

The Evidence Was Sufficient to Sustain the Verdict

In considering the contention that a conviction is not supported by substantial evidence, the appellate court must take that view of the evidence which is most favorable to sustaining the verdict of the jury. *Glasser* v. *United States*, 315 U.S. 60, 62 S. Ct. 457 (1942); *Diaz-Rosendo* v. *United States*, 357 F.2d 124 (9th Cir., 1966). A brief review of some of the evidence adduced at the trial will show that there was sufficient evidence to sustain the jury's verdict of guilty. Mr. Harvey of the Internal Revenue Service testified that the records of the District Director of Internal Revenue for Northern California for the fiscal year starting July 1, 1964 showed no registration, payment of the occupational tax, or excise tax returns for the appellants (T. pp. 27-29). Mr. Zivic testified that pursuant to an understanding with Nolte he placed horse race wagers over the phone with a person named "Shirley" (T. pp. 44-48); that

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* The cases in fact argued were those of Grosso and James Marchetti. The case of James Marchetti, a co-defendant of Costello, was substituted for the Costello case subsequent to Costello's death. The Marchetti case raises the constitutionality of the registration and occupational tax statutes. The Grosso case raises the question of the constitutionality of the 10% excise tax.

he paid Nolte, or collected from him, depending upon whether he won or lost (T. p. 49). He further testified that when Nolte stopped coming around that Morgan started paying and collecting from him (T. p. 51). Mr. Stathes testified that he placed wagers with Nolte in person and over the phone and that Nolte paid him when he won and collected from him when he lost (T. p. 64).

Mrs. Holeman testified that she worked for Nolte on a phone spot receiving bets which she relayed to Ziegele, first known to her only as "Shirley" (T. pp. 76-77); that Nolte told her that the bettors used nicknames in order to prevent involvement with the "federal people" (T. p. 97); that Nolte was concerned about the "feds" (T. p. 84) and the "tax people" (T. p. 91). She testified that Nolte told her that if one week his bettors won more than they lost, then his backers would cover the loss but that in the following weeks he would have to reimburse the backers out of his share of the winnings (T. p. 96). She testified that Ziegele told her that what she was doing was illegal and that it was income tax evasion (T. p. 103); that Ziegele told her to destroy the records of the bets she made and that Ziegele suggested several ways of hiding the records (T. p. 109). Mrs. Holeman further testified that she asked Ziegele if she could set up a "split book" with Roy Fleet (unknown to Ziegele, Roy Fleet was a Special Agent of the Internal Revenue Service), and that Ziegele said "I have to check with my boss first" (T. pp. 111-113); that Ziegele informed her that he had checked with

his boss and that his boss would call her later (T. p. 114). Mrs. Holeman further testified that Morgan called and said that he was the person who was supposed to call, and that Morgan questioned her about Roy Fleet (T. p. 115). In her testimony she stated she met with Morgan and that Morgan again questioned her about Roy Fleet. At this meeting Morgan described himself to Mrs. Holeman as an "eliminator" and a "screener" for the organization (T. p. 400) and told her that "he was considering dropping Herb Nolte from the organization" (T. pp. 115-117). Mrs. Holeman testified that Ziegele told her "that since he hadn't heard anything to the contrary from Danny Morgan" she could begin to take bets from Roy Fleet (T. p. 117); that after she accepted bets from Roy Fleet, Morgan called her and instructed her "to hold up on Roy Fleet's action" until he could do a little more checking on him (T. p. 119); and that on one occasion she relayed a late bet directly to Morgan who told her "he would take care of it" (T. p. 460).

Daniel Morgan testified that Ziegele asked him to screen Roy Fleet (T. p. 585) that he contacted Mrs. Holeman and screened Roy Fleet (T. p. 587); that he knew Ziegele was taking horse bets on the phone (T. p. 596). He admitted a prior felony conviction for bookmaking (T. p. 602) and also that he had collected money from Mr. Zivic (T. p. 579) and that "Shirley" was the code name of Ziegele (T. p. 601).

Alfred Ziegele admitted that he accepted wagers from Nolte and Mrs. Holeman and from individual bettors (T. p. 614); that he asked Morgan to contact

Mrs. Holeman to screen Roy Fleet; that he used the code name "Shirley" (T. p. 642). He admitted a prior felony conviction for failing to have a tax stamp (T. p. 627).

Herbert Nolte admitted accepting bets from Mrs. Holeman (T. p. 652) and stated that Mrs. Holeman worked on a phone spot receiving wagers for him (T. p. 651); that under his financial agreement with Mrs. Holeman she received twenty per cent of the losing bets (T. p. 685). He admitted that he had relayed bets over the phone to a person called "Shirley" (T. p. 654); that he destroyed the records of bets he had made (T. p. 678). He further admitted that he paid and collected on the bets (T. p. 675) and that he had a prior felony conviction for failing to have a tax stamp (T. p. 659). Nolte also admitted that he had a financial arrangement with a person named Karl and that Karl paid him fifty per cent of the losing bets (T. p. 651).

From the evidence adduced it is clear that the jury had ample basis to conclude that Morgan was the principal in this gambling operation. It was he who telephoned Mrs. Holeman and identified himself as the man who was supposed to call to check out Roy Fleet (Ziegele had previously told her that his boss would call her in regard to Roy Fleet). It was Morgan who instructed Mrs. Holeman to stop taking bets from Roy Fleet until he could check on Fleet more thoroughly. He also told Mrs. Holeman that he was considering dropping Nolte from the organization, and he described himself to her as the "boss", the "eliminator".

The evidence shows that Nolte and Ziegele were important participants in the gambling operation run by Morgan. Nolte paid and collected on bets. He hired Mrs. Holeman to work on a phone spot on a percentage basis. He accepted bets and relayed them to Ziegele through Mrs. Holeman. Ziegele worked on the telephone receiving bets from individual bettors and called Mrs. Holeman daily to collect the bets that she had received. It was Ziegele who had Morgan contact Mrs. Holeman for the purpose of checking out Roy Fleet.

It is apparent that Nolte and Ziegele were aware that a tax was due on the bets that they handled and that they acted affirmatively to conceal that tax liability. Nolte and Ziegele used code names to protect themselves and their bettors. They concealed and destroyed the records of the bets that they handled. Nolte told Mrs. Holeman not to hide her records of the bets in a drawer because the "tax people" would be sure to look there. He advised her not to go to the Square Chair Bar because of the "feds". Ziegele told Mrs. Holeman that what she was doing was illegal and that it was income tax evasion. He told her to destroy the records of the bets she made, and he informed her of several ways of concealing records.

It is submitted that the evidence adduced at the trial clearly shows that Nolte and Ziegele participated with Morgan for profit in this gambling operation and had knowledge of the tax liability and that all three appellants acted affirmatively to conceal that tax liability.

In regard to Nolte, the evidence not only shows that he was an aider and abettor, but that he was also a banker. His income was determined by the number of bets he handled and by the difference between the bettors losses and their winnings. If Nolte's bettors won more than they lost, his backers would put up the money. Then, when his bettors lost more than they won, he had to reimburse his backers for the money that they had put up. It is obvious that Nolte had a direct financial interest in the bets he handled. The bettors were actually betting against Nolte and thus he is seen to be a banker, not a mere writer. See, *United States* v. *Calamaro*, 354 U.S. 351, 77 S.Ct. 1138 (1957).

III

The Instruction on Aiding and Abetting Was Not an Amendment of the Indictment In Violation of the Fifth Amendment

Under Title 18, Section 2, one who aids, abets, counsels, commands, induces, or procures the commission of an offense against the United States is punishable as a principal.

All petitioners contend that in order to convict an individual of aiding and abetting in the commission of a substantive offense, the individual must be charged in the indictment with Title 18 U.S.C. Section 2. In *Nye & Nissen* v. *United States*, 336 U.S. 613, 69 S.Ct. 766 (1949), where the indictment did not contain any reference to Title 18, Section 2, the Supreme Court found the instruction to the jury concerning Title 18 Section 2 to be entirely proper and

held that the verdict could be supported on the theory that one who aids and abets the commission of a crime is as responsible for the crime as if he committed it directly. See also *Pang* v. *United States*, 209 F.2d 245 (9th Cir., 1953). It is submitted that the District Court in instructing the jury on aiding and abetting did not amend the indictment.

IV

The District Court Did Not Err In Refusing to Grant Appellants' Motions for a Mistrial Based Upon the Alleged Misconduct of Counsel for the Government

Counsel for the Government in good faith and after laying a foundation offered into evidence "Plaintiff's Exhibit 8" which consisted of reports and memoranda which supplemented the testimony of Mrs. Bonnie Holeman and the tapes in evidence. Following a timely objection by counsels for all appellants, counsel for the Government yielded to their objections to the admission into evidence of Plaintiff's Exhibit 8. It is neither prejudicial error nor misconduct for a prosecutor to lay a foundation for the admission of evidence which is subsequently excluded on objection. *Schmidtberger* v. *United States*, 129 F.2d 390 (8th Cir., 1942). Counsel in a criminal case has no way of knowing before hand that the evidence which he offers in good faith will be objected to. It is the duty of a prosecutor to offer competent evidence to establish the guilt of the accused, as it is the duty of defense counsel to object to evidence which he feels is inadmissible.

The jury was admonished by the trial judge that they were not to speculate as to the contents of the memoranda (T. p. 464). This is not a situation where a jury has heard either improper impeachment or cross-examination. See e.g., *State* v. *Main*, 37 Idaho 449, 216 P.731; *People* v. *Wells*, 100 Cal. 459 (1893); *Dastagir* v. *Dastagir*, (1952), 109 C.A. 2d 809, 241 P.2d 656; *Balistreri* v. *Turner*, (1964) 227 C.A. 2d 6, 38 Cal. Rptr. 553; *Stoskoff* v. *Wicklund*, (1923) 49 N.D. 708, 193 N.W. 312; *Thomas* v. *United States*, 363 F.2d 159 (9th Cir., 1966); *Lawrence* v. *United States*, 357 F.2d 434 (10th Cir., 1966). The contents of "Plaintiff's Exhibit 8" were never exposed to the scrutiny of the jury. It is respectfully submitted that the offer into evidence of Plaintiff's Exhibit 8, which was withdrawn upon objection, is not grounds for the granting of a motion for a mistrial.

V

A Prosecution Based Upon the Wagering Tax Statutes Does Not Violate the Right to Due Process Guaranteed by the Fifth Amendment

Petitioners Morgan and Ziegele argue that the wagering tax statutes are unclear as to what activities they cover, and therefore, that a prosecution based upon these statutes violates the defendants' rights of due process under the Fifth Amendment.

In *United States* v. *Calamaro*, 354 U.S. 351, 77 S.Ct. 1138 (1957) and again in *Ingram* v. *United States*, 360 U.S. 672, 79 S.Ct. 1314 (1959) the Supreme Court in no uncertain terms made it clear that

the following persons are liable for the $50 occupational tax: (1) those who operate the gambling enterprise and against whom the players bet, (the banker); (2) those who actually do the accepting of the bets for the banker, (the writers); and (3) those who have a proprietary interest in a gambling enterprise. Additionally, in *Ingram* the Supreme Court stated that the proprietors of a gambling enterprise are liable for the ten percent excise tax imposed on wagers. Contrary to the assertion of the appellants, the law is abundantly clear. Persons who deal with the bettors and persons who operate or assist in the operation of a gambling enterprise (other than those performing merely clerical functions) are each liable for the occupational tax, and the individuals who operate the enterprise—the bankers, the principals, are liable for the excise tax.

It is clear that all the petitioners were either directly liable for the excise tax or were aware of the tax liability and took active measures to conceal that liability.

VI

The Remarks of the District Court Made In the Presence of the Jury Pertaining to the Tapes Played at the Trial Were Not Prejudicial to the Appellants

Petitioners Morgan and Ziegele argue that the discussions and remarks by the court in the presence of the jury concerning the playing of the tapes were prejudicial to the defendants. While it can be argued that, in fact, the remarks of the court were not prejudicial, nevertheless it is noted that it was stipulated the court would explain to the jury its remarks con-

cerning the tapes and further that the court would state to the jury that if any juror felt that the court's comments were critical of either side that he was to raise his hand, and that if any hands were raised the court would declare a mistrial (T. p. 334). Thereafter, the court addressed the jury in accordance with the stipulation (T. p. 337). Since no juror raised a hand (T. p. 337), it is clear, (whatever view might be taken of the court's remarks under other circumstances) under the facts disclosed in this case, that the jury attached no particular significance to the court's remarks and that the petitioners were in no way prejudiced thereby.

VII

The Trial Court Did Not Err In Instructing the Jury Before Argument Concerning Acts and Declarations of Co-Conspirators

Petitioner Nolte argues that the trial court erred in instructing the jury before argument on acts and declarations of co-conspirators. During the course of the trial, the jury, on several occasions, was instructed that the acts and declarations of one defendant could not be held to apply to any other defendant. For the purpose of clarification, prior to argument and only after reiterating that the above-stated rule was still in effect, the Court advised the jury of the instruction concerning acts and declarations of co-conspirators that it intended to give after argument (T. p. 773-775). The Court emphasized to the jury that they would be formally instructed after argu-

ment and that they were not to give undue consideration to the anticipated instruction. After argument the jury was formally instructed concerning the acts and declarations of co-conspirators. Rule 30, Federal Rules of Criminal Procedure does not preclude a Court from instructing the jury during the trial provided that the jury is appropriately instructed after argument. See, *Sembler* v. *United States*, 332 F.2d 6 (9th Cir. 1964).

The jury was correctly instructed on acts and declarations of co-conspirators by the Court after argument (T. p. 917). They acquitted the appellants of the conspiracy charge. Therefore, even if the anticipated instruction was incomplete the appellants were not prejudiced by the instruction being given prior to argument.

VIII

The Instructions on Tax Liability Were Complete and Correct

Petitioner Nolte argues that the instructions on tax liability were erroneous.

In instructing the jury, the trial court read the indictment in its entirety to the jury (T. p. 896-908). Count II of the indictment, as read to the jury, specifically charged the appellants with being principals in the business of accepting wagers. Two of the instructions [1] given to the jury regarding Count II re-

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[1] A) Now, with regard to the ten percent excise tax on wagers, the following persons are liable under the law—one or more of the statutes I read to you—for that tax: One, any

ferred specifically to the business of accepting wagers. Viewing the instructions as a whole, the jury could not have failed to understand that in order to convict the defendants, they would first have to be convinced beyond a reasonable doubt either that defendants were persons engaged in the business of accepting wagers and had willfully failed to pay the excise taxes due on wagers accepted and had taken affirmative action to conceal their tax liability or had aided and abetted a person so liable in failing to pay such tax and to conceal such tax liability. In reviewing instructions given to the jury, the appellate court must consider the instructions as a whole. *Herzog* v. *United States*, 235 F.2d 664 (9th Cir., 1956). In addition, the refusal of an instruction which in substance has been covered in the trial court's charge is not error. *Finn* v. *United States*, 219 F.2d 894 (9th Cir., 1955). It is submitted that the instructions given to the jury relating to the excise tax liability of the appellants were complete and correct.

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person who conducts a wagering pool or has a proprietary interest in such a pool is liable for the tax on wagers placed with the pool. Two, any person *who is engaged in the business of accepting wagers* is liable for the excise tax on all wagers placed with him (T.P. 920). (emphasis ours)

B) Now, in determining whether or not a person is engaged in the business of accepting wagers, I instruct you that the fact that a person is engaged in one form of employment does not preclude him from being engaged in some other pursuit or endeavor at the same time. Nor do the facts, if they are shown, that a person has only a few customers force the conclusion that he is not engaged in a particular business or occupation (T.P. 921).

CONCLUSION

It is respectfully submitted that the judgment of the court below should be affirmed.

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JANUARY, 1967

CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rule 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

PHILIP WILENS,
Attorney,
Department of Justice

APPENDIX A

Chapter 35—Taxes on Wagering

Subchapter A—Tax on Wagers

Section 4401. Imposition of tax

(2) Wagers.—There shall be imposed on wagers, as defined in Section 4421, an excise tax equal to ten per cent of the amount thereof.

(b) Amount of wager.—In determining the amount of any wager for the purposes of this subchapter, all charges incident to the placing of such wager shall be included: except that if the taxpayer establishes, in accordance with regulations prescribed by the Secretary or his delegate, that an amount equal to the tax imposed by this subchapter has been collected as a separate charge from the person placing such wager, the amount so collected shall be excluded.

(c) Persons liable for tax.—Each person who is engaged in the business of accepting wagers shall be liable for and shall pay the tax under this subchapter on all wagers placed with him. Each person who conducts any wagering pool or lottery shall be liable for and shall pay the tax under this subchapter on all wagers placed in such pool or lottery. Any person required to register under Section 4412 who receives wagers for or on behalf of another person without having registered under Section 4412 the name and place of residence of such other person shall be liable for and shall pay the tax under this subchapter on all such wagers received by him.

Section 4402. Exemptions

(Not applicable)

Section 4403. Record requirements

Each person liable for tax under this subchapter shall keep a daily record showing the gross amount of all wagers on which he is so liable, in addition to all other records required pursuant to Section 6001(a).

Section 4404. Territorial extent

The tax imposed by this subchapter shall apply only to wagers

(1) accepted in the United States, or
(2) placed by a person who is in the United States
    (a) with a person who is a citizen or resident of the United States, or
    (b) in a wagering pool or lottery conducted by a person who is a citizen or resident of the United States.

Section 4405. Cross references

(Not applicable)

Subchapter B—Occupational Tax

Section 4411. Imposition of tax

There shall be imposed a special tax of $50.00 per year to be paid by each person who is liable for tax under Section 4401 or who is engaged in receiving wagers for or on behalf of any person so liable.

Section 4412. Registration

(a) *Requirement.*—Each person required to pay a special tax under this subchapter shall register with the official in charge of the internal revenue district—

(1) his name and place of residence;

(2) if he is liable for tax under subchapter A, each place of business where the activity which makes him so liable is carried on, and the name and place of residence of each person who is engaged in receiving wagers for or on on his behalf; and

(3) if he is engaged in receiving wagers for or on behalf of any person liable for tax under subchapter A, the name and place of residence of each such person.

(b) *Firm or company.*—Where subsection (a) requires the name and place of residence of a firm or company to be registered, the names and places of residence of the several persons constituting the firm or company shall be registered.

(c) *Supplemental information.*—In accordance with regulations prescribed by the Secretary, he or his delegate may require from time to time such supplemental information from any person required to register under this section as may be needful to the enforcement of this chapter.

Section 4413. Certain provisions made applicable

(Not applicable)

Section 4414. Cross references

(Not applicable)

Subchapter C—Miscellaneous Provisions

Section 4421. Definitions

For purposes of this chapter—

(1) *Wager.*—The term "wager" means—

(a) any wager with respect to a sports event or contest placed with a person engaged in the business of accepting such wagers,

(b) any wager placed in a wagering pool with respect to a sports event or contest, if such pool is conducted for profit, and

(c) any wager placed in a lottery conducted for profit.

(2) *Lottery.*—The term "lottery" includes the numbers games, policy, and similar types of wagering. The term does not include—

(a) any game of a type which usually

(i) the wagers are placed,

(ii) the winners are determined, and

(iii) the distribution of prizes or other property is made, in the presence of all persons placing wagers in such games, and

(b) any drawing conducted by an organization exempt from tax under Sections 501 and 521, if no part of the net proceeds derived from such drawing inures to the benefit of any private shareholder or individual.

Section 4422. Applicability of federal and state laws

The payment of any tax imposed by this chapter with respect to any activity shall not exempt any person from any penalty provided by a law of the United States or of any State for engaging in the same activity, nor shall the payment of any such tax prohibit any State from placing a tax on the same activity for State or other purposes.

Section 4423. Inspection of books

Notwithstanding Section 7605(b), the books of account of any person liable for tax under this chapter may be examined and inspected as frequently as may be needful to the enforcement of this chapter.

CHAPTER 75—CRIMES, OTHER OFFENSES, AND FORFEITURES

Subchapter A—Crimes

Section 7201. Attempt to evade or defeat tax

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than five years, or both, together with the costs of prosecution.

Section 7203. Willful failure to file return, supply information or pay tax

Any person required under this title to pay any estimated tax or tax, required by this title or by regulations made under authority thereof to make a return (other than a return required under authority of Section 6015 or Section 6016, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than one year, or both, together with the costs of prosecution.

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